APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,040	02/01/2001	Joerg Ehrhardt	7057 US	2464

7590 03/26/2004	EXAMINER
Francis I. Gray, Esq. Tektronix, Inc. P.O. Box 500 (50-LAW) Beaverton, OR 97077	NARAYANASWAMY, SINDYA

ART UNIT	PAPER NUMBER
2174	4

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application N● ●	Applicant(s)
Office Action Summary	09/776,040	EHRHARDT ET AL.
	Examin r Sindya Narayanaswamy	**Art Unit** 2174

-- The MAILING DATE of this communication appears on the cover sheet with th correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 February 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2*.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed
> publication in this or a foreign country or in public use or on sale in this country, more than one year prior
> to the date of application for patent in the United States.

2.   Claims 1-3, 6-10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by

Swift et al (hereinafter Swift), WO 98/57268.

1.   As per claim 1, Swift teaches a method of setting up a communication procedure between

instances, with one instance being a protocol tester, comprising the steps of: selecting the

instances that take part in the communication procedure (*various network components can send*

messages to management) (page 1, paragraph 3, lines 1-9); selecting a protocol layer on the basis

of the communication procedure (*Internet protocol or Transport Control Protocol or other*

protocol capable of transferring messages is used) (page 7, paragraph 1, line 1-paragraph 2, line

9); selecting abstract communication interfaces of the protocol layer for the communication

procedure (*software applications that build interfaces*) (page 7, paragraph 2, lines 1-9); selecting

communication data; and automatically setting up through the protocol tester the communication

procedure on the basis of the selections made in the above selecting steps, with the abstract

communication interfaces selecting and/or the communication data selecting steps being made

graphically and parameters selectable during these steps being assigned description files that are

used in the setting up step to set up the communication procedure (*message created, interfaces*

produced with PowerBuilder/PowerSockets, specific description file in Fig. 3, 222 (message sequence defination)) (page 7, paragraph 3, lines 1-5).

2.   As per claim 2, Swift teaches the method wherein the instances selecting step comprises the step of selecting the instances graphically and/or the protocol layer selecting step comprises the step of selecting the protocol layer graphically, and the parameters selectable in these steps being assigned description files *(message sequence, 406)* that are used in the setting up step *(device name selection, message selection)* (Fig. 4A-4B).

3.   As per claim 3, Swift teaches the method wherein the abstract communication interfaces comprise Service Access Points *(specific device)* (Fig. 4B, 438).

4.   As per claim 6, Swift teaches the method wherein the communication data-selecting step comprises the steps of: graphically selecting a data format; and graphically setting up a communication sequence between the selected instances *(graphical interface to define and specify message)* (page 3, paragraph 2, line 1-paragraph 3, line 9)

5.   As per claim 7, Swift teaches the method wherein the graphically setting up step comprises the step of entering source code *(customizing software/code for testing purposes)* (page 2, paragraph 2, lines 1-7).

6.   As per claims 8–10 they are the means claims of claims 1-3.

7.   As per claim 13, teaches the protocol tester wherein all parameters selected by all the

selecting means are assigned description files that are used by the setting up means (*message*

sequence identifier) (Fig. 4a, Fig. 3, page 9, paragraph 3, lines 1-7).

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth
>
> in section 102 of this title, if the differences between the subject matter sought to be patented and the prior
>
> art are such that the subject matter as a whole would have been obvious at the time the invention was made
>
> to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be
>
> negatived by the manner in which the invention was made.

9.   Claims 4, 5, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Swift et al (hereinafter Swift), WO 98/57268.

10.   As per claims 4, 5, and 11, in addition to what has been discussed for claims 1-3 and 8-

10, Swift does not teach the method wherein the communication data comprise at least one type

selected from the group consisting of Protocol Data Units and Abstract Service Primitives.

However, Official Notice is taken that specifying a data type is necessary and that PDUs

(packetized data) and Abstract Service Primitives are well known in the art as data

communication types therefore it would have been obvious to one of ordinary skill in the art at

the time of the invention to modify Swift's invention to include the option of selecting a type

from a group including PDUs and ASPs in order to data type selection options for the user.

11.   As per claim 12, Swift teaches the protocol tester comprising means for entering source

code (*customizing software/code for testing purposes*) (page 2, paragraph 2, lines 1-7).

Conclusion

12.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure:

   a. Garner et al., US-6,411,806 – network management

   b. Ahlberg, US-6,405,195 – protocol testing

13.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Sindya Narayanaswamy whose telephone number is (703) 305-

8473. The examiner can normally be reached on 8 am to 5 pm, first Fridays off.

   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kristine Kincaid, can be reached at (703) 308-0640. The fax phone numbers for the

organization where this application or proceeding is assigned are (703) 305-5404 for regular

communications and (703) 305-5404 for After Final communications.

   Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703) 305-3900.

Sindya Narayanaswamy

March 19, 2004

KRISTINE KINCAID
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100